

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
LITTLE MISSOURI RIVER BASIN ABOVE LITTLE BEAVER CREEK (39F)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANT: Pilster Ranch Corp.

**CASE 39F-0501-R-2023**

39F 26519-00

39F 26521-00

39F 27569-00

39F 27580-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

FINDINGS OF FACT

1. Pilster Ranch Corp. (Pilster) is the record owner of claims 39F 26519-00, 39F 26521-00, 39F 27569-00, and 39F 27580-00.

2. Claims 39F 26519-00, 39F 26521-00, and 39F 27580-00 were decreed with DNRC issue remarks:

**39F 26519-00:**

ON JULY 22, 1988 THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FILED A MEMORANDUM STATING: "THERE SHOULD BE A GRAY AREA REMARK FOR ACREAGE. THERE WERE 45 ACRES CLAIMED, THE 7% CUTOFF WAS 41.85, AND 21 ACRES WERE VERIFIED." THIS ISSUE REMARK WILL BE ADDRESSED AND RESOLVED AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

**39F 26521-00:**

THE CLAIMS LISTED FOLLOWING THIS STATEMENT MAY BE A MULTIPLE USE OF THE SAME RIGHT. THESE CLAIMS MAY NEED A MULTIPLE USE REMARK. 39F 26521-00, 39F 27569-00.

THIS CLAIM APPEARS TO BE CLAIMING TWO SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

**39F 27580-00:**

THE FLOW RATE IS MISSING.

All issue remarks must be resolved.

3. On May 19, 2023, an Order (the Order) was issued. (Doc<sup>1</sup>1.00). The Order did the following:

- Set a deadline for Pilster to file information regarding the number of irrigated acres for claim 39F 26519-00
- Reopened claim 39F 27569-00
- Called claim 39F 27580-00 on motion and set a deadline for Pilster to file information regarding whether the claim is a valid water right

4. On July 18, 2023, Larry Pilster, President of Pilster Ranch Corp., filed a Statement in Response to the Order. (Doc. 2.00).

5. Pilster filed 1967 and 1981 aerial photos and indicated the correct maximum acreage of the fields irrigated by claim 39F 26519-00 is 27.80 acres, and the volume should be reduced to 41.30 acre-feet, as follows:

Volume:	41.30	68.00 AC-FT
Maximum Acres:	27.80	45.00

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<sup>1</sup> “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

Place of Use: See below for new POU:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	30.00		SENE	28	8S	58E	CARTER
2	13.00		SWNW	27	8S	58E	CARTER
3	2.00		NESWNE	28	8S	58E	CARTER
Total:		45.00					

New POU:

1.20	NENESE	28	8S	58E	CARTER
6.60	N2SENE	28	8S	58E	CARTER
7.50	S2SENE	28	8S	58E	CARTER
12.50	N2SWNE	28	8S	58E	CARTER
27.80					

The proposed changes address the issue remark decreed on claim 39F 26519-00.

6. Pilster's response confirmed claims 39F 26521-00 and 39F 27569-00 are multiple uses of the same historical water right, a multiple use information remark should be added to both claims.

7. Claim 39F 26521-00 is for a water-spreading system using dikes. The record does not indicate that each dike is a separate appropriation for a distinct water right. The dikes are located near each other in the vicinity of a confluence between two sources and appear to be a single development.

8. Claim 39F 27580-00 is for a rainwater collection system for domestic use and was called in on motion as the Water Questioned whether a person could appropriate rainwater. Claim 39F 27580-00 was claimed with a 250.00 gallon per minute (gpm) flow rate and the flow rate was subsequently removed from the claim during examination and a remark was added stating "rainfall and runoff from roofs." A 1.40 acre-feet volume was claimed and is still reflected on the abstract.

### PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

3. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is

overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

4. If a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), W.R.Adj.R.

#### CONCLUSIONS OF LAW

1. The evidence in the record is sufficient to resolve the issue remarks decreed on the claims in this Case.

2. No objections were filed to claim 39F 27580-00 and the issue remark was resolvable without calling the claim in on motion. The on motion should be dismissed.

#### RECOMMENDATIONS

1. Claim 39F 26519-00 should be modified as shown in Finding of Fact No. 5.  
2. A multiple use information remark should be added to claims 39F 26521-00 and 39F 27569-00.

3. The issue remarks should be removed from the claims in this Case.  
Post Decree Abstracts of Water Right Claims are served with the Report for review.

#### **ELECTRONICALLY SIGNED AND DATED BELOW.**

#### **Service via USPS Mail:**

Pilster Ranch Corp.  
55 Pilster Drive  
Alzada, MT 59311

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**LITTLE MISSOURI RIVER, ABOVE LITTLE BEAVER CREEK**  
**BASIN 39F**

**Water Right Number:** 39F 26519-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** PILSTER RANCH CORP  
55 PILSTER DRIVE  
ALZADA, MT 59311

**Priority Date:** JULY 20, 1948

**Type of Historical Right:** USE

**Purpose (use):** IRRIGATION

**Irrigation Type:** WATER SPREADING

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT FLOW WATER SPREADING.

**Volume:** 41.30 AC-FT

**Climatic Area:** 2 - MODERATELY HIGH

**Maximum Acres:** 27.80

**Source Name:** UNNAMED TRIBUTARY OF WILLOW CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNE	28	8S	58E	CARTER

**Period of Diversion:** FEBRUARY 15 TO NOVEMBER 15

**Diversion Means:** DIKE

**Period of Use:** FEBRUARY 15 TO NOVEMBER 15

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1.20		NENESE	28	8S	58E	CARTER
2	6.60		N2SENE	28	8S	58E	CARTER
3	7.50		S2SENE	28	8S	58E	CARTER
4	12.50		N2SWNE	28	8S	58E	CARTER

**Total:** 27.80

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**LITTLE MISSOURI RIVER, ABOVE LITTLE BEAVER CREEK**  
**BASIN 39F**

**Water Right Number:** 39F 26521-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** PILSTER RANCH CORP  
55 PILSTER DRIVE  
ALZADA, MT 59311

**Priority Date:** JULY 20, 1948

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** WATER SPREADING

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT FLOW WATER SPREADING.

**Volume:** 63.00 AC-FT

**Climatic Area:** 2 - MODERATELY HIGH

**Maximum Acres:** 42.00

**Source Name:** ZIMMERMAN DRAW

**Source Type:** SURFACE WATER

**Source Name:** UNNAMED TRIBUTARY OF WILLOW CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESENE	29	8S	58E	CARTER

**Source Name:** ZIMMERMAN DRAW

**Period of Diversion:** FEBRUARY 15 TO NOVEMBER 15

**Diversion Means:** DIKE

2		SWSNW	28	8S	58E	CARTER
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**Source Name:** UNNAMED TRIBUTARY OF WILLOW CREEK

**Period of Diversion:** FEBRUARY 15 TO NOVEMBER 15

**Diversion Means:** DIKE

**Period of Use:** FEBRUARY 15 TO NOVEMBER 15

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	8.00		SENE	29	8S	58E	CARTER
2	5.00		NESE	29	8S	58E	CARTER
3	13.00		SWNW	28	8S	58E	CARTER
4	14.00		SENW	28	8S	58E	CARTER

5	2.00	E2SWNE	29	8S	58E	CARTER
Total:	42.00					

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

26521-0027569-00

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**LITTLE MISSOURI RIVER, ABOVE LITTLE BEAVER CREEK**  
**BASIN 39F**

**Water Right Number:** 39F 27569-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** PILSTER RANCH CORP  
55 PILSTER DRIVE  
ALZADA, MT 59311

**Priority Date:** JULY 20, 1948

**Type of Historical Right:** FILED

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** ZIMMERMAN DRAW

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESENE	29	8S	58E	CARTER

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DAM

**Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
SESENE		29	8S	58E	CARTER

**Diversion to Reservoir:** DIVERSION # 1

**Period of Use:** JANUARY 1 TO DECEMBER 31

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SESENE	29	8S	58E	CARTER
2			W2SENE	29	8S	58E	CARTER

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**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

26521-00

27569-00



**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**LITTLE MISSOURI RIVER, ABOVE LITTLE BEAVER CREEK**  
**BASIN 39F**

**Water Right Number:** 39F 27580-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** PILSTER RANCH CORP  
55 PILSTER DRIVE  
ALZADA, MT 59311

**Priority Date:** JUNE 30, 1938

**Type of Historical Right:** USE

**Purpose (use):** DOMESTIC

**Flow Rate:**

RAINFALL AND RUNOFF FROM ROOFS

**Volume:** 1.40 AC-FT

**Households:** 2

**Source Name:** UNNAMED TRIBUTARY OF WILLOW CREEK, NORTH FORK

**Source Type:** SURFACE WATER

RAINWATER COLLECTED IN CISTERNS

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNWNW	29	8S	58E	CARTER

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** OTHER DIVERSION

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWNWNW	29	8S	58E	CARTER